THE CASE OF Mr. FRANCIS JENKES.

BEING

An Impartial Relation of his Imprisonment in the Gate-House, with the Occasion of it, and the Means used for his Enlargment.

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MR. *Jenkes*, having been a Trader for many years, and observing the daily decay of Trade in the City, occasioned by such mischiefs, as lay not in the industry of its Inhabitants, but only in the power of the Government to redress; and that did require a more speedy redress than a Parliament Prorogued for 15 Months could afford; after having in vain solicited the Lord Mayor for a Common-Council, that might consider of a Petition about Trade; out of a hearty zeal for the good of the City, as well as encouraged by the consent and desire of many sober Citizens, the Liberty reserved to the Lord Mayor, Aldermen, and Common-Council, by the Statute of the 13*th.* of this King concerning Petitions, the Votes of a majority of the *Temporal Lords* at the last Session, together with the unanswerable Reasons given in their Protestation, did at the *Folk-moot* (or Common-Hall) holden the 24*th.* of *June* last past, in the *Guild-hall* of *London*, thus divert himself:

Mr. Common Sergeant,

IT seems a vain thing for this Court to be serious about the choice of Magistrates and Officers for the well Government of this City, except they first take care to remedy those many Mischiefs and Grievances, which the City now groans

groans under, and which seem so to threaten the ruine and destruction of the whole, that if there be not some speedy redress, there will be little need of Magistrates, and Officers, for there will be no City or People left here to be Governed.

London has once already been burned to ashes, and firing is now become such a Trade, that not only *London*, the Burrough of *Southwark*, and the places adjoyning, but all the Cities, Burroughs, Towns Corporate, and places of principal Trade throughout the whole Kingdom, are perpetually in danger; so that no rational or considerate man amongst us can promise himself, his Wife, his Children, or Estate one nights security, but they may all be devoured in the consuming flames, except some speedy and effectual course be taken.

But this is not all; For were our Houses secure from fire, yet such is the general decay of Trade, as if not remedied, must unavoidably bring the whole City to poverty and ruin; and it is conceived, that this is very much occasioned by the *French*, who have laid such great Impositions upon our Woollen Cloth, Stuffs and other Manufactures, that we have almost lost our Trade with *France*, they have spoild our Trade with *Holland*, *Flanders* and *Germany*, by a destructive War. They have ruined our Trade at home, and beggared many thousands of our honest and industrious Weavers, and other *English* Manufactors and Traders, by the vast quantity of their silks, and other unnecessary Commodities imported hither: so that upon an exact ballance of the Trade between us and them taken, it has been demonstrated that this City and Kingdom doth lose *Eleven hundred thousand pounds* every year. By means whereof, they who in Queen *Elizabeths* time might not be suffered to build Men of War, are now grown so powerful at Sea, as to be able to beat both *Dutch* and *Spaniard*, and have made themselves in a manner sole Masters of the *Mediterranean* Sea: And they

are grown so presumptuous as daily to injure and affront our *English Merchants*, and sometimes in his Majesties own Ports. Their Privateers daily take our Merchants Ships, plunder others, strip, imprison and torment our Seamen to the great discouragement of our *English Navigation*, and almost ruine of the Merchant.

I shall instance but in one thing more, but that is worse than all the rest, That is the just apprehension that is upon the minds of good men, of danger to his Majesties Person, and the *Protestant Religion*.

I had not spoken this at this time and place, but having the honour to serve this City in Common Council, I have endeavoured at several times to bring these things before that Court, but could not. In the end of the last Common-Council I did desire my Lord Mayor that a Common Council might speedily be held to hear and consider of a Petition about Trade, subscribed by a great number of Citizens of good quality, and his Lordship did then promise that a Common-Council should speedily be held: But it is a good time since, and there have been many Fires and Losses, but no Common-Council. Wherefore, me-thinks it doth become the wisdom and gravity of this Court not to admit of any longer delay in a matter wherein their *All* is concern'd. And I do humbly move (and I conceive it is not only my sense but the sense of the far greater part of this Court) that some Members of this Court may accompany the Sheriffs and Mr Common Sergeant before we proceed to any other matter, to wait upon my Lord Mayor, and the Court of Aldermen, to desire that a Common-Council might speedily be held, humbly to Petition his Majesty, That for the quieting and satisfying the mindes of his liege People, and for remedy of the many mischiefs and grievances we now groan under, He would graciously be pleased (according to the Statutes of the 4th. and 36th. of Edw. 3.) timely to Call a *New Parliament*.

Scarce-

Scarcely were the words, *A New Parliament*, pronounced, but the greatest part of the Assembly cryed out, *Well moved! Well moved!* And though none spake up formally to the Sheriffs, yet several amongst them spake enough to shew a high approbation of what had been said, and not one word was spoken in contradiction: which when the Common Sergeant saw, to prevent (as is conceived) others speaking to the same matter, he spake to this purpose.

That what had been moved, seemed to be the general sence of the whole Court, and since the Gentleman that made the motion, was pleased to joyn him with the Sheriffs, and that he must offer his opinion in the matter; It was this, That it was not so proper to carry up that message before they did proceed to their Elections; as first to determine their Election, and then carry up an account of these and that together. But many in the Court did insist upon the motion and desired a message might be sent up immediately. Whereupon one of the Sheriffs spake, and did acknowledge That what had been said by the Gentleman that spake first was true, but that he was an Old Citizen, and had long known Common Halls, and he did believe that the proper Work of the Day was the Election of Officers, and therefore he did desire that the Court would proceed, and not to carry up the Message till after that was done. To which one replyed: That according to his utmost understanding that Court was one of the antientest, greatest and most powerfull Courts of the City, and although the customary business of this day were the choice of Officers, yet that Court had cognizance of any thing whatever that did relate to the good of the City, and therefore it was conceived, that nothing was more proper at that time than that which concerned the preservation of the City from utter ruine.

Upon which the other Sheriff directing his discourse to the Assembly, said, That what the Gentleman had moved there was true, and not unknown to most of the persons

there

there present; but that he was of his Brothers opinion, that it was fit first to go on to the work of the day, and not to carry up that message till after the Election. Many persons being still dissatisfied, and calling for a present message to be sent up, the Gentleman, who first moved the business made it his request, that since there seemed a difference touching the circumstance of time, that they would proceed to Election, and carry up the Message with the persons Elected, as the Sheriffs desired; to which the common Hall unanimously agreed. Upon which, silence being made, the common Hall proceeded to election of Sheriffs, and made their Election, and sent up an account thereof to the Lord Mayor and Aldermen by the Sheriffs and common Sergeant, as is usual in such cases. The Lord Mayor and Aldermen presently came down and took their seats in the Court of *Hustings* according to custom; upon which the common Sergeant came forth to the front of the Court, and declared the Names of the persons Elected, and immediately gave back. Thereupon the common Hall called out for an Answer to their Message; upon which the common Sergeant stepping forward again in the presence of the Lord Mayor, Aldermen and Sheriffs, said, That he had acquainted his Lordship and the Aldermen with their request, and that his Lordship had commanded him to declare unto them, that he would be ready to joyn with them in that, or any other thing for the good of the City. And with that the Lord Mayor and Aldermen, *&c.* left the Court of *Hustings*, and dismissed the Assembly.

After Dinner, the grave Recorder, *Sir John Howel*, out of a great pretence of Loyalty, but indeed a personal Grudge against Mr. *Jenkes*, conveyed the news to *White Hall*, where with his usual strain of Retorick, he made such a dismal representation of the matter, and was so powerful in his Eloquence, as to occasion both the Sheriffs and some other of the City Officers to be

sent

sent for, who were examined by the Lord Chief Justice *Rainsford*, in the presence of the King, the Lord Chancellour, the Lord Treasurer, Duke *Lauderdale*, and other Lords.

The Sheriffs and two others made *Affidavits*, but a Copy of them could never be obtained. Upon the 27th. of *June*, Mr. *Jenkes* was summoned by a Messenger to appear at the Council Board the next day. Accompanied with many of his Friends, he attended in the *Lobby*, near the *Council Chamber*, according to his summons, and after some time was called in, but his Friends pressing to follow him (as is usual on such occasions) were kept out, and not one suffered to go in with him. The King sitting in *Council*, the Lord *Chancellour*, D. *Lauderdale*, and other Lords about him, The *Clerk* read an *Affidavit* made by the two Sheriffs, the common Cryer, and one *John Green* an Attorney, the Substance whereof was,

That Fr. Jenkes, *at a Common Hall in* London, *the* 24th. *of* June *last past, did complain of Grievances, and did desire that before they went upon any other business, certain Members of that Court might accompany the Sheriffs and the Common-Sergeant to wait upon the Lord Mayor, then in the Chamber, to desire that a Common-Council might be called to Petition his Majesty, in the Name of the City, to Call a* New Parliament.

The *Affidavit* being read, the *Council Board* proceeded to this effect.

Lord *Chancellour*. Sir, What say you to this matter?

Mr. *Jenkes*. I desire to know if this be all you have to charge against me?

A *Lord*. Then you make little of this: You will find it to be enough.

Lord Chancellour. Sir, Did you move for a *Common-Council* to Petition for a *New Parliament?*

Mr. *Jenkes*. Is it any Crime to Petition for a *New Parliament?*

To

To which his Lordſhip not thinking fit to give any Anſwer, proceeded.

Lord Chancellour. Anſwer to the matter in charge.

Mr. *Jenkes.* With the liberty of his Majeſty and this Board, I will.

The *King.* Go on.

Mr. *Jenkes.* May it pleaſe your Majeſty, Of all the Subjects you have,

A *Lord* (interrupting him) Anſwer to the matter.

Mr. *Jenkes.* If his Majeſty will be pleaſed to hear me, I hope you will.

The *King.* Let him go on.

Mr. *Jenkes.* May it pleaſe your Majeſty, Of all the Subjects you have, none are more Loyal than your City of *London*, and in the City, none more loyal than my ſelf, and no man there did more deſire, and in my circumſtances act more in order to your Majeſties Reſtauration than my ſelf: And I do defy any Citizen or other, whomſoever, to ſay I have forfeited my loyalty by any one individial act.

The *King* interrupting him, Sir, you are not Lord *Mayor*, and I am very well ſatisfied with the loyalty of the City, and that it needs no ſuch Vouchers.

Lord Chancellour. Speak to the matter.

Mr. *Jenkes.* May it pleaſe your Majeſty, Being ſummoned to a Court of Common Hall in *London*, which is a Court that conſiſts of the main Body of the City.

Lord Chancellour interruping him, Sir, you are under a double miſtake, for firſt, it was not a Court; and next, it did not conſiſt of the main Body of the City of *London*.

Mr. Jenkes. With your Lordſhips leave, it was a Court which doth conſiſt of all the Livery of the City of *London*, which, if I underſtand any thing, is the main Body of the City of *London*. And every member of that Court hath freedom to propoſe and debate any ſuch matter or thing as

he believes is for the ſervice of his Majeſty, and the good of the City; and no man can uſe more underſtanding than God has given him. And I aſſure your Lordſhip, what I then moved, was according to the utmoſt of my underſtanding for his Majeſties ſervice, and the good of the City: And (my Lord) if I were under a miſtake, I had the fortune to have good Company, for what I moved, was approved by the whole Court.

The *King*. It was not ſo.

Secretary. We have a depoſition to the contrary.

M. Jenkes. It was ſo.

Other *Lords*. It was not ſo.

Mr. Jenkes. May it pleaſe your Majeſty, If you have a hundred depoſitions to the contrary, if the matter of fact were ſo, it was ſo, and I do affirm, it was approved by the whole Court.

A *Lord*. How came you to be a Privy Councellour?

Mr. Jenkes. I never had any ſuch ambitious thought in my head.

A *Lord*. How came you then to meddle with matters of State?

Mr. Jenkes. I thought any of his Majeſties ſubjects, in an humble manner, might Petition his Majeſty for a Remedy of any Grievance whatſoever.

A *Lord*. Do you think any one may Petition for a *Parliament*?

Mr. Jenkes. I believe they may.

The *King*. I know whoſe Scholar you are, and I'll take care that none ſuch as you ſhall have to do with the Government.

Several *Lords*. What was't you mov'd? What was't you mov'd?

M. Jenkes. My Lords, What I ſpake was not in a Corner, but openly in the faces of a *Multitude*, and therefore cannot want a Witneſs to atteſt it.

A *Lord.* Juſt now it was a *Court*, and now it is a *Multitude.*

Mr. Jenkes. We Citizens pretend not to place our words ſo exactly in form, but that there may beſome miſtake in them but I think my expreſſion was no great abſurdity, for though it were a *Court*, yet the Perſons there were ſo numerous, that it may not be very improper to term them a *Multitude.* Yet, if I have failed in due expreſſion, I beg his Majeſties pardon. I know ſomewhat of the Cuſtoms of the City of *London*, and the Powers and Priviledges of the Courts there, and ſomwhat alſo of the Laws of *England*, but what the Powers and Cuſtoms of this Court are, I know not, and therefore ſhall deſire to ſay little, leſt I ſhould unwillingly offend.

Lord Chancellour. Sir, Pray tell us, who adviſed you in this matter?

The *King.* Who adviſed you?

Mr. Jenkes. VVhat I then propoſed, was conſented to by the whole Court, and ſo became their Act, as I ſaid before.

Lord Chancellour, and Others. Anſwer directly to the Queſtion, or declare you will not.

Mr. Jenkes. Since I ſee your Majeſty and the Lords are angry, tho I am not ſenſible that I have given you any juſt cauſe for it, I muſt not ſay, I did it without advice, leſt you ſhould be more angry, and to name any particular Perſon (If there were ſuch) would be a mean and unworthy thing, therefore I deſire to be excuſed all farther anſwer to ſuch queſtions; ſince the Law doth provide, that no man be put to anſwer to his own prejudice.

The *King.* We will take that for an anſwer.

Lord Chancellour. Since you name the Law, by the Law you ſhall be tryed.

Mr. Jenkes. I thank you, and this Board.

Lord Chancellour. You may withdraw.

He immediately withdrew, and the room being cleared of all his friends and other company, then the Messenger, was kept there for the space of an hour and an half, and after that without being called in any more, was by a Warrant of the Council, sent to the Prison of the *Gate-house*, within the Liberties of *Westminster*. Soon after his commitment, he demanded of the Keeper a Copy of the Warrant, by which he was was commited, as he might, and by Law ought to have. The Keeper gave him a promise of it, but delaying the performance for two dayes, *Mr. Jenkes* resolutely demanded it of him as his duty, but could not yet obtain it. Sometime after the Keeper sent him one voluntarily, by his man, with this excuse, That before he had positive order to deny him one, and now had to give it him.

The

The Copy of the Warrant.

WHereas it appears to his Majeſty in Council, by the examination of Sir Thomas Gold, Sir John Shorter, Knights, Sheriffs of the City of London, John VVells Common-Cryer of the ſaid City, and John Green one of the Attorneys of the Lord Mayors Court, taken upon Oath before the Lord chief Juſtice Raynsford, That Francis Jenkes of the ſaid City, Linnen-Draper, did on the 24th. of this inſtant June, at a Common Hall then aſſembled at the Guild-Hall of the ſaid City for chooſing Officers for the enſuing Year, in a moſt ſeditious and mutinous manner, openly move and ſtir the perſons then preſent, That before they did go on to the choice of new Officers, (which was the only occaſion of that Aſſembly) they ſhould go to the Lord Mayor, and deſire him to call a Common-Counſel, that might make an addreſs to his Majeſty, in the Name of the City, to call A New Parliament. And whereas the ſaid Francis Jenkes, being now called in and heard before his Majeſty in Council, was ſo far from denying or extenuating his offence, That he did in a preſumptuous and arrogant manner, endeavour to juſtify the ſame.

Theſe are therefore to command you, to take into your cuſtody, the Body of the ſaid Francis Jenkes, herewith ſent you, and him to Keep ſafely, until he ſhall be delivered by due courſe of Law, for which this ſhall be your Warrant.

Dated,

Dated at the Council Chamber in *White-Hall* this 28*th.* Day of *June*, 1676.

To the Keeper of the Gate-House VVestminster, *or his Deputy.*

Lindsey, Anglesey,
Peterborow, Arlington,
C. Craven, Bathe,
G. Carter, J. Williamson,
Lauderdale, R. Carr,
Northampton, Finch,
Carbery, Ormond,
W. Maynerd, Bridgwater,
Tho. Chicheley, Hen. Coventry,
Danby, J. Ernle.

Robert Sowtwell.

Next

NExt day being the 29*th*. of *June*, divers of Mr. *Jenkes* Friends waited upon Mr. Secretary *Williamſon* and deſired to become Bail for him; but Mr. Secretary refuſed to take any Bail, but told them, if they did mind him of it upon *Wedneſday* morning, he would move it at the Council. But Mr. *Jnkes* beleiving that to be (as it proved) but a delay, ordered ſome of his friends to wait upon the Lords Chiefe Juſtice *Raynsford*, and moved him for an *Habeas Corpus ad Subjiciend. & Recipiend.* &c. which accordingly was done; but his Lordſhip, denied to grant it. Alleading no other reaſon, but that it was *Vacation*; though his Lordſhip could not but know that Writ to be the Subjects Right at all times, as well out of Term, as in Term, and *Mr*, *Jenkes* friends were ready to offer him multitudes of Preſidents when it had been granted out of Term both anciently and ſince his Majeſties Reſtauration.

Mr. *Jenkes* reſolving to leave no legall courſe, to attaine his liberty untryed, upon *Friday* the 30*th*. Of *June* at a General Seal, did, by his Counſel move the Lord Chancellor for an *Habeas Corpus*; at firſt his Lordſhip did ſeem much ſurprized and did refuſe to hear his Counſel, but after a little pauſe, his Lordſhip bid *Mr*. *Jenkes* Counſel to move it again the next Seal, and ordered the Seal to be put off from *Tvveſday* the 4*th*. untill *Thurſday* the 6*th*. of *July*.

Upon *Wedneſday* the 5*th*. of *July*, *Mr*. *Jenkes* friend waited upon Mr. Secreatary *Willamſon*, and deſired him according to his promiſe to move in Councill that *Mr*. *Jenkes* might be Bayled; but he ſaid, he had ſpoake with the King and could do nothing without a Petition, ſo upon *Thurſday* the ſixth of *July*, being a Publick Seale, *Mr*. *Jenkes* Counſell did again move the Lord Chancellor (according to his Lordſhips order) and aſſerted the Authority of the Lord *Cook*, who is moſt clear in the Caſe, 2. *part*. *Inſtututes fol*. 53. Speaking of the VVrit of *Habeas corpus* in the *Kings Bench*, he

he ſaith, *The like Writ is to be granted out of the* Chancery *either in Term* (as in the *Kings Bench*) *or in the* Vacation, *for the* Court of Chancery, *is*, Officina Juſtitiæ, *and is ever opened, and never Adjourned: So as the Subject being wrongfully Impriſoned, may have juſtice for the liberty of his perſon as well in the* Vacation *time as in Term.*

And in the 4*th. Inſtit. fol.* 88. ſpeaking of the Court of *Chancery*, he ſaith, *And this Court is the rather always open, for that if a man be wrongfully Impriſoned in the* Vacation, *the* Lord Chancellour *may grant an* Habeas Corpus, *and do him juſtice, according to Law*, And, *Vide* 4. *Inſtit. fol.* 182. 190.

Thus the Lord Cook.

Mr. Jenkes Counſel did likewiſe offer a Preſident or two, but the *Lord Chancellour*, making light of the Lord Cooks opinion, ſaying, *The* Lord *Cook was not Infallible*; And ſlighting all that *Mr. Jenkes* Counſel offered, over-ruled the matter, denying to grant the VVrit.

On Tueſday morning *July* 11*th.* at the Quarter Seſſions holden for the liberty of *Weſtminſter*, *Mr. Jenkes* being ſtill a priſoner in the *Gate-houſe*, within that liberty, did move by his Counſell to be bayled, where this was the ſubſtance of what paſſed as it was taken by a by-ſtander.

Court. We have no ſuch Name in our *Kalender*, and we ſitting here by a limited Commiſſion, can take no notice of any perſon that is not in our *Kalender*.

Council: Every keeper of a Priſon either in County or Franchiſe ought, by the ſtatute of 3. *H.* 7. *cap.* 3. to certifie the names of every Priſoner in their Cuſtody at the next generall Goal-delivery there to be Kalendered before the Juſtice of Goal-delivery that the partys may be delivered according to Law, upon pain of 100 l. For every defalt there recorded, and I demand that this defalt of the Goaler may be recorded according to that ſtatute, and that you would as you may, command him to Kalender him now.

The

The ſtatute was read.

Court. VVe are no general Goal-delivery for we cannot Try ſeverall felons but they muſt be tryed at the generall Goal-delivery for the County.

Counſel. You are a generall Goal-delivery for all offences within the Cogniſance of your Franchiſe, and therefore unleſſe the Fact for which he is Committed be ſuch as is above your Cogniſance he ought to be Tryed here, and if it be ſuch a Fact, he ought notwithſtanding to be Kalendered here, that you may ſend him to the County Goal where he may be tryed.

Goaler. I never did Kalender any man that was committed by the Councill Table.

Counſel. The neglect hath not taken away your duty, and as often as you have ommitted to do ſo, ſo oft you have deſerved to be fined, and I do again demand of this Court that this default of yours may be recorded.

The Court inclined to the Goaler, and would not record his default, whereupon the Counſel proceeded.

Counſel. Since you exclude him from the benefit of your preſent Commiſſion, I apply my ſelf to you, without reſpect to that, as you are Juſtices of peace in general, and as ſuch, you have power to bail any man bailable by Law, except in ſome particular caſes where you are reſtrained by ſtatute.

Court. By whom is he committed.

Counſel. By the Council Board.

Court. Do you believe the Council Board can commit to priſon.

Counſel. I admit it.

Court. VVe don't know for what offence he is committed.

Counſel. I have here a Copy of the Commitment and deſire it may be read.

But the Goaler refuſing to own it for a true Copy, tho

given by himself, and the Court requiring a nicer proof, that it was a true Copy, than could at that time be made, they orderd the Counsel to attend in the afternoon, and in the mean time the Goaler to give a true Copy. In the afternoon the Counsel appearing, the Court called to him, and asked him what he had to say.

Counsel. I have now a Copy given and signed by the Goaler for a true Copy, and desire it may be read.

The Goaler who was to prove it a true Copy, upon the Counsels coming into Court, took an occasion to slink away and the Court (as if it had been by design) were ready to take hold of that opportunity to evade the busineſſe, but *Mr. Jenkes* friends fetched him back, and he Swearing it to be a true Copy, it was read.

Court. What is it you demand?

Counsel. What I did before: that there being nothing in this warrant for which he is not Bailable by Law, I demand that he may be Bailed.

Court. You have taken a wrong course in comming to us.

Counsel. I presume he applyes himself properly to you, for he being a Prisoner within your Liberty, you are the most proper persons to bayl him: As Justices of the Peace you have power to bayl any man within your Jurisdiction, baylable by Law, and where you may bayl by the Law, you ought to do so, and I demand it for *Mr. Jenkes.*

Court. Where do you find such power given to Justices of the Peace?

Counsel. By the same Statute, of *H. 7.* that I cited against the Goaler, the enacting part whereof saith, *That the Justices of the Peace, in every Shire, City or Town, or two of them at the least, whereof one to be of the* Quorum, *have authority and power to let any such prisoner or persons,* Mainpernable *by the Law, that have been Imprisoned within their several Counties, City or Town, to bail or mainprize, unto their next General Sessions, or unto the next Goal-delivery, of the same*

ſame Goales of every Shire, City or Town as well within Franchiſes as without, where any Goales be, or hereafter ſhall be, &c.

The whole Statute was read, and the Court taking hold of the preamble, ſaid.

Court. This ſtatute was made for the prevention of bailing Felons not bailable by Law, and enables us only to bail Felons bailable by Law.

Counſel. The Preamble of the Act recites that miſchief occaſioned by the Statute of 1. *R.* 3 But the Enacting part Repeales that Act and gives you a general power of letting any perſons mainpernable by the Law to bail, and I'm ſure no ſtatutes made for the liberty of the ſubject ought to receive ſuch a ſtrait Conſtruction.

Court. Do you conſider by whom he is commited? the Privy Council.

Counſel. I do, and think that alters not the caſe.

Court. He is commited by a ſuperiour Court and we who are an Inferiour one cannot bail him.

Counſel. It is not the Court that commits but the Fact for which the party is committed ought to direct you in Bail. The Statute of *H.* 7. hath no ſuch exception in it, nor hath any other ſince put any ſuch reſtraint upon you.

Court. Would you have us Bail him after the Lord Chancellour and the Lord Chief Juſtice have refuſed to grant a *Habeas Corpus*?

Counſel. They did not deny the *Habeas Corpus* becauſe he was not Bailable by Law, but becauſe the Courſe of their Courts in their opinions would not admit it, but however, if you ought to Bail him, as by the Statute I think you ought, their refuſal does not leſſen your duty.

Then the Court put him ſeveral caſes that did not at all reach the preſent caſe, as they ſeemed to think themſelvs by their faint urging them.

Court. We doubt very much that any inferiour Court can

Bail a man Committed by a Superiour one.

Counsel. Scruples and fears do not alter the Law: this doubt was once made in the Kings Bench the great case of *Selden* and others, but the Law was for the Prisoner before that time, and was sufficiently settled then, and this case differs nothing from that in reason.

Court. It does, for that was upon a *Habeas corpus* out of the Kings Bench.

Counsel. That is but a circumstanciall difference. The *Habeas corpus* from that Court is only to remove the prisoner and the cause before them, that Justice may be done to him; *Mr. Jenkes* is already within your Jurisdiction, and the statute gives you Authority to Bail him, and your Authority makes it your duty, and I rely upon that.

Court. We considerd upon it at Dinner, and do belive it a rare case and fit to be advised upon, and we will advise. Why did you not move yesterday when my Lord Chief Justice was in Town? Now there are no Judges in Town to advise with.

Counsel. That we did not come yesterday was no design, for he is not so fond of a Goal; and if it be an indiscretion, yet that is no sufficient reason to detain a man in prison, however if you have power (which you ought to know) you have it as well when they are not in Town as when they are. Is he Bailable by Law or not?

Court. There is nothing in the Warrant for which he is not Bailable by Law.

Counsel. For what reason then do you deny him?

Court. We do not deny him, but we will advise because he is Committed by a superiour Court.

Counsel. No man ought to be imprisoned for any misdemeanour before Conviction without Bail, and it is against the Petition of Right, that any man Bailable by Law should be detained in Goal without it. I don't know how by such denials as this the being Commited by a superiour Court

Court may grow to be a reaſon, but at preſent I think the Petition of Right ſpoils it for being a good one.

Court. You can give us no Preſident of any one being Bailed by Juſtices at the Seſſions, who was committed by the Council Board.

Counſel. I believe it is a rare caſe that a man ſhould be forced to apply himſelfe to ſuch, but I think I can furniſh you with an inſtance, and that is of one *Cannon* a Quaker who was committed by the Privy Counſell about *Chriſtmas* laſt, and was Bailed at the Seſſions of the *Old Baily*. A pert By-ſtander, no ways concerned, ſuggeſted to the Court, and the Court repeated after him.

Court. He was commited to *Newy-Gate* Priſon, and was Kalendered there.

Counſel. If you ſtick to the reaſon of being committed by a Superiour Court, that is no anſwer; but if it muſt be an anſwer, *Mr. Jenkes* is committed to the Priſon of this Liberty and ought to have been Kalenderd here, and then I do again demand that the Goaler be fined.

Court. We think it a rare caſe and fit to be adviſed upon, and our Commiſſion we here ſit by, directs us to do ſo in difficult caſes.

Counſel. I told you before, I have nothing to do with the Commiſſion you hear ſit by, and your ſelves excluded me from it, but apply my-ſelf to you as Juſtices of Peace meerly, and as ſuch, you ought to take upon you the knowledge of your Office.

Court. In the great caſe of *Selden*, that you Cited, the Judges took two Terms to adviſe.

Counſel. You very well know what Opinion was had of their doing ſo. Will you adviſe upon it to Night with the Kings Counſel, and Ile attend you to morrow morning?

Court. We think fit to adviſe with the Judges about it till next Seſſions.

Counſel.

I can easily interpret what such advising means.

Court. You say you apply your self to us as Justices of Peace meerly, then you may come to any two of us a fortnight hence or more, and perhaps we may advise in the mean time.

Counsel. I believe it will be a difficult matter to get any two of you together upon this occasion.

Mr. *Jenkes*, finding all these common Doors to Liberty shut against him, did by advise betake himself to another method, not lesse legall then the former, tho the Power, granted by the Statutes, to Justices of Peace and the constant issuing of the Writ of *Habeas Corpus* upon demand (both more easy Courses) have occasioned it to be of more seldom use.

Justice Fitzherbert in his *Natura Brevium* (an Author and a Book of Justly venerable Authority in our Law) in his Chapter of *Mainprise* declares, *That if a man be taken by the Kings Commission and kept in Prison for Felony or Misdemeanors, he may by his friends put in sureties in the Chancery, that he will appear before the Justice, &c. And be of good behaviour, &c. And that body for body, and thereupon he shall have a Writ out of the Chancery unto the Sheriff or unto the Constable of the Castle where he is Imprisoned, to set him at liberty if he be Imprisoned for that cause and for no other.*

Which words seem plainly to declare the Writ of *Mainprise* to be the subjects right, and not to leave a discretional power to the Officers of Chancery in granting it. But the scarcity of Presidents being the great Objection against the *Habeas Corpus* out of Chancery, Mr. *Jenkes* resolved to offend no more in that kind, and therefore caused a search to be made in the Rolls in the Tower for the Writs of *Mainprise*, where a multitude of them was found and many in the case of a Commitment by the Kings command. A Copy of one and a Note of severall others were taken out, to Back the Authority of *Fitzherbert*. With this provision, on *Monday*

July

July 17th. four of Mr. *Jenkes* friends, substancial Merchants, attended with a Counsel went to the Lord Chancelour, and tho upon tender of themselves as Bayl for him, they might have demanded their Writ of *Mainprise*, as the Subjects right without other formality, yet they addressed themselves to him in a more respectfull manner by way of Petition, thus.

To the right honourable Henry Lord Finch, *Baron* of Daventrey *and* Lord High Chancellour *of* England.

The humble Petition of *A. B. C. D.* of *London* Merchants, friends to *Francis* Jenkes now Prisoner in the *Gate-House* of *Westminster*, sheweth: That the said *Fr. Jenkes* was Committed to the said Prison by virtue of a Warrant, a true Copy whereof is here unto annexed, for a fact Bayl-able by Law, for which, and no other cause, he yet remains there a Prisoner: And that in this and all other cases of like nature, your Petitioners are advised upon putting in Bayl in the Court of *Chancery*, according to the antient course and usage thereof, a Writ of *Mainprise* ought to Issue under the Great Seal, to be directed to the Sheriff or Keeper of the Prison where such prisoner stands Committed, to deliver the prisoner so Committed.

That your Petitioners being men of good Estates (as shall if your Lordship require, be made out to your Lordship) do desire and are ready to become Bayl for the said *Fr. Jenkes*, according to the course of the *Chancery*, and according to the Law.

The Petitioners therefore pray, That your Lordship would accept of Bayl accordingly, and that thereupon your Lordship would order a Writ to be made forthwith, to be directed to the Keeper of the *Gate-house*, for the discharg of the said *Fr. Jenkes*.

And your Petitioners shall always pray, *&c.*

The petition being sent in to, and read by his Lordship, was returned by the Secretary with this answer, That his Lordship

Lordship did very well approve of the Petition but since Mr. *Jenkes* was commited by the Council Board, he thought fit that they should be Petitioned, and should Bayl him. But Mr. *Jenkes* friends not being satisfied with that answer, pressed to speak to his Lordship, and were by his Lordships order called in, who comming towards them, spake to this effect.

Lord Chief Justice. Who Is't that puts you upon these improper methods.

Counsel. We presume this addresse to your Lordship to be a proper course in our case and is such as we have prsident for.

Lord Chief Justice. Are you a Lawyer?

Counsel. Yes, my Lord.

Lord Chief Justice. Have you read *Fitzheberts Brevium*? Look in his Writ, *de homine replegiando.*

Counsel. We have nothing to do with that Writ, but it is by *Fitzherbert* that we are directed to this course, in his Chapter of *Mainprise*, where he saith, what is before Cited, and we are confirmed in his opinion by a multitude of Presidents out of the close Rolls in the Tower, I have the Copy of one here, and the number and Roll of many more.

The president shown to his Lordship was this.

Ex Rol. claus. de Anno Regni Regis Ed. 3. xi. parte prima membra, 28.

De deliberand. *Ric. Monyvvord* a prisona.

Rex Senescallo & Marescallo Hospitij nostri, salutem. Cum *Rich. Monyvvord* in prisona Mariscallcæ nostræ per preceptum nostrum, pro quibusdam transgressionibus & contemptibus nobis factis ut dicitur detentus, existat sub custodia Janitoris nostri, ac *Williel. Stury* Chivaleir, *Tho. Pride* de Comitat. *Salop. Oliverius* de *Burdeaux* de Com. *Berkes*, *Andreus Aubray*, *Johannes Pisselan*, &

& Petrus Fan *de* London, *coram nobis in* Cancellaria *noſtra, perſonaliter Conſtituti manuceperunt predictum* Richard. viz. *qui libet eorum corpus pro corpore habere coram nobis, vel Juſtitiariis noſtris, aut Conſcilio noſtro, quandocunq; & ubicunque voluerimus, ad mandatum noſtrum ad ſtand. rect. de tranſgreſſionibus, & contemptibus & aliis exceſſibus quibuſcunque, unde indictatus vel rettatus eſt, & quod bene & fideliter erga nos, & Populum noſtrum, de cetero ſe geret, vobis mandamus, quod prefatum* Ricard. *a Priſona predicta, ſi ea occaſione, & non alia, detineatur, in eadem deliberari faciatis, per manucaptionem ſupradictam.*

Teſte Rege *apud* Weſtmonaſt. *decimo nono die* Martij,

P. iſtm. Regem.

Convenit cū *Recardo Laur. Halſted* Deput.
Algernon May, Militis.

The Note of the Number and Roll of ſeveral Writs of *Mainpriſe* upon Surety put into *Chancery*, ſhewn to his Lordſhip, was this.

11. *Ed.* 3. pt. 1. To the Conſtable of the Tower, to Deliver *John Brice.*

11. *Ed.* 3. pt. 1. mem. 29. To the Conſtable of the Tower, to deliver *Bernard Pouch.*

11. *Ed.* 3. pt. 1. mem. 28. To the Conſtable of the Tower, to deliver *Henry Compton.* Teſte 26 *Martij.*

Eodem Rot. 23. To the Conſtable of the Tower, to deliver *John de Weſenham.* Teſte 18 *Aprilis.*

44. *Ed.* 3. pt. 1. mem. 6. *Cuſtod. Foreſt.* For delivery of ſeveral perſons committed for Hunting in Foreſts, Since the *Stat.* 28 *Ed.* 3. *Cap.* 9.

Eodem Rot. mem. 10. The like Teſte 20 *Aug.*

Eodem Rot. mem. 17. The like.

Eodem Rot. mem. 25. The like for *Will. de Clark.*

3. *Rich.* 2. mem. 3. To the Sheriff of *London*, to deliver *Nich. de Swederton & Joh. Deye.* Teſte 5. *Decemb.*

Eodem Rot. mem. 22. To the Juſtices of *North Wales* to deliver *Lloyd.*

Lord Chancellour. One Preſident of diſcretion is worth a thouſand of theſe Preſidents.

His Lordſhip read the Preſident, and obſerving it to bear *Teſte* the 19*th.* day of *March*, which could never be in Term, asked, When it was returnable? And ſaid, It muſt be returnable in ſome Court at *Weſtminſter.*

Counſel. This Preſident hath no Return, neither doth the Nature of the Writ in this Caſe require one, for it is only a *Mandate* to the *Goaler*, to ſet him at Liberty upon *Sureties*, firſt taken in *Chancery*, for his appearance before the Juſtices, which Juſtices, and the time of his appearance, I ſuppoſe are to be named in the *Recognizance.*

Lord Chancellour. Whether there ought to be a Return is the Queſtion; Beſides, this is a Writ directed immediately to the Marſhal of the Houſhold, and is a different Caſe.

Counſel. With ſubmiſſion to your Lordſhip, it makes no difference who is the Goaler, and thoſe I have given your Lordſhip the Number and Roll of, are to ſeveral Goalers.

Then *Fitzharberts Nat. Brevium* was ſhown to his Lordſhip, and upon reading the words there, *If a man be Impriſoned by the Kings Commiſſion*, &c. His Lordſhip ſaid, that it was intended of one Impriſoned by virtue of a Commiſſion out of *Chancery.*

Counſel. I humbly preſume, that is not the ſence of the Book; the Preſidents I have ſhewn your Lordſhip ſeem to Interpret it, and are upon other *Comments*; and *Fitzharbert* in his *Abridgment Tit. Mainprize pl.* 23. cites a Book Caſe, that ſhews this to have been a courſe in the *Chancery*, but we ſubmit it to your Lordſhips Judgment.

Lord

Lord Chancellour. A little submission in a proper Place will do, but he hath a mind to come out with a high hand.

Counsel. He has a mind to be discharged by Law, as the Warrant for his Commitment directs.

Lord Chancellour. I am not to controll any Act of the Privy Council,

Counsel. At the last motion for a *Habeas Corpus*, your Lordship was pleased to say, That though that was not a proper method for Mr. *Jenkes* to obtain his Liberty by, yet there was one; and upon that encouragement from your Lordship search has been made, and this Course we have now taken found to have been the antient Course, and we did presume the same that your Lordship meant.

Lord Chancellour. You have used a great deal of industry to miss the right way. Your Presidents of *Edward* the 3d. and *Richard* the second, since three hundred year old, I'll consider off till next Term. Upon which Answer Mr. *Jenkes* his Friends withdrew.

Now the plenty of Presidents proved as great a fault, as want of them did before, and their Age, which uses to add to their Authority and give them a greater respect, made them contemned: Such alwayes is the Success where, *Stat pro Ratione, Voluntas.* In the Afternoon, the Secretary that first carryed in the Petition, came to Mr. *Jenkes* in a dissembled confusion, and told him that he had committed a mistake in returning the Petition, That his Lordship had ask'd him for it; and would be very angry with him if he had it not; That he had left his Lordship looking over some Papers and taken that opportunity of coming for it, and desired that he might have it to preserve him from his Lordships displeasure. Tho the Mornings action gave Mr. *Jenkes* a great deal of reason to suspect the Secretary's tale to be a meer contrivance, and easy to surmise the Truth, yet he took no notice of what had then

Note, That he return'd it by his Lordships Order.

then paſſed, but ſent the Petition, which was then in ſome of his Friends hands, that evening to him. Upon the ſecond thoughts which his Lordſhip beſtowed upon the matter of the Petition, he was better reconciled to it, and proved better than his word in conſidering the Preſidents; for, in ſtead of pauſing on them till the next Term, he was pleaſed to carry them and the Petition to the Privy Council the next *Wedneſday*, where, tho all the particulars are not known, upon credible Information this was the ſubſtance of what paſſed. His Lordſhip acquainted the Board of the Addreſs that had been made to him, and moved that the Petition might be there read. After it was read, his Lordſhip told them that it had ſome appearance of Law, and deſired that the *Attorney General* might give his opinion. Mr. *Attourney* told him, If it were Law, his Lordſhip ought to grant it, if it were not Law, then to deny it; If it were of ſuch difficulty as he could not ſatisfy himſelf, That then he ſhould adviſe with the Judges. His Lordſhip then moved for an Order of Council for his direction in the matter, to which ſome of the Lords reply'd, That they were a Court of *State* and not of *Law*, and that it did belong to him as *Lord Chancellour* to inform them in matters of *Law*. Thereupon his Lordſhip claping his hands on his breaſt, ſaid, *I thank God I have Courage enough to ſerve his Majeſty.*

About the latter end of *July* ſome of Mr. *Jenkes* his Friends attended his Lordſhip again, and offered him Bail inſiſting upon the Writ of *Mainprize* as the Subjects Right, alledging to his Lordſhip the hazzards that his Health, his Family, and his Trade were expoſed to by his confinement. His Lordſhip asked them why they had not petitioned the King and Council, and told them if Mr. *Jenkes* thought it better to lye in Priſon and Complain, than Petition and be Bayled, he might do as he pleaſed.

They told him they had tendred Bayl to Mr. Secretary *Williamſon*, who promiſed them to move the King and Coun-

cil

cil in it, but when they reminded him of it upon the next Council Day, he was pleaſed to excuſe himſelf. His Lorſhdip told them he never heard they had tendred Bayl, but the Writ of *Mainprize* was forgotten in all his Anſwers.

They then told him, that the General Report was, that the King and Council had referred it to his Lordſhip, but his Lordſhip would take no notice of that likewiſe, but ſaid, the King would adviſe with the Judges when they came to Town. His Lordſhip with-drew from them, and they left word with his Secretary, That Mr. *Jenkes* looked upon himſelf to be his Lordſhips Priſoner.

On the of *Auguſt*, Mr. *Jenkes's* Friends went again to my *Lord Chancellours*, but his Secretary told them his Lordſhip could not be ſpoken with. They prevailed with his Secretary to go up to him and remind his Lordſhip of his laſt Anſwer of adviſing with the Judges, and tell him that ſeveral of the Judges had been in Town, and they did now deſire his Lordſhips Reſolution.

The Secretary at his Return told them, that as ſoon as he began to mention the buſineſs, his Lordſhip fell into a fit of the Stone, but when that was over, he would mention it unto him. About two hours after they returned, and the Secretary being abſent, another of his Lordſhips ſervants came to them and told them that his Lordſhip was not well, and could not be ſpoken with, but had ordered him to tell them, That Mr. *Jenkes* might adviſe with his Counſel what was fit to be done for he was none of his Counſel, and if he would Petition the King and Council he might, and that that was his Anſwer.

On the 11*th.* of *Auguſt*, being the laſt Council day that was to be before the 3*d.* of *October*, Mr. *Jenkes* thought fit again to tender Bayl to the Council, and that the *Lord Chancellour* who diſowned all knowledge of his doing ſo before, and the whole Council might know of it, he ſent this Letter by his Bayl to the Lord *Privy Seal*, then Preſident of the Council, which was publickly read.

My

My Lord.

I Have been imprisoned since the 28th of *June*, to my great losse charge and prejudice of my health. I have hitherto been denyed Bayl, *Habeas Corpus* and the Writ of *Mainprise*, which I am informed, were never before denied to any of his Majestys subjects in the like case; and this only for moving in a lawfull Court, and in a quiet and peacable manner, that which I did believe to be for his Majestyes service, and the good of the City and Kingdom and the preservation of the Protestant Religion, and which I conceive I can make appear to be according to the Laws and Statutes of this Realm, if I am publickly called thereto. Wherefore, I do not beg a discharge, for I desire nothing more then to clear my innocence by a publick tryall; but since Mr. *Murrel*, and others, committed to this prison for matters of a far other nature, are daily bayled out, my humble request to your Lordship is, that you would be pleased to move his Majesty, that I as well as any other of his Majestys subjects, may enjoy the benefit of the Laws, and that the Writ of *Mainprise* may be granted to me, or that my Bayl, which now attend, may be taken. Your Lordship will very much oblige

Your Lordships humble Servant,

FRANCIS JENKINS.

This

This Letter was by some improved into a Petition; and when they had given it that name, (tho that was the only thing wanting to please the Lord Chancellour, yet it could not procure the acceptance of Bayl, but the method proposed by his Lordship proved as ineffectuall as those that were demanded of him. The *Lord Chancellours* resolutions being sufficiently discovered, Mr. *Jenkes* friends forbore all farther sollicitation of his Lordship, and made fresh application to the Lord *Chief Justice Rainsford*, on *August* 18*th*, then just returned from the Circuit. The time of Sessions at the *Old Bailey* drawing on, They caused two Writs of *Habeas Corpus* to be made (the common course of removing prisoners from one Goal to another) one, *ad deliberandum*, directed to the Keeper of the *Gate-house*; the other *ad recipiendum*, directed to the Sheriffs of *London*, and desired his Lordship to sign them, that Mr. *Jenkes* might be removed and brought to tryall; for that the keeper of the *Gate-house* not Kalendering any State prisoner (as he called him) at the Sessions for *Westminster*, he might lye there all his life time without triall, which no Subject ought to do. His Lordship excused himself upon his late return to Town which had not yet afforded him leisure to advise; and sent them to the *Attorney Generall* to know whether he were ready for a Tryal, before he would give them any answer. *Mr. Attorney* upon their coming to him very worthily told them that he had no order in it, but that he would not oppose the granting of those Writs; adding God forbid but that the Law should have its due course. They returned to the *Lord Chief Justice* with this answer and offered to make Oath that it was Mr.. *Attorneyes* answer, but he would give credit to nothing but a note under *Mr. Attorneys* own hand. They told him it was hard that a man should ly in prison who was willing to bring himself upon tryall, that Writts of this nature were every day granted and did presume could not reasonably be denyed. His Lordship answerd he would know whether

Mr.

Mr. Attorney were ready for a Trial. They replyed that they did not know when Mr. *Attourney* would be ready, and if *Mr. Jenkes* muſt ſtay for his Tryal till then, they then moved his Lordſhip as they had done formerly, that he would grant a *Habeas Corpus* to bring him before his Lordſhip, and that he would accept of ſubſtantial Citizens for Bayl, who ſhould render him whenſoever Mr. *Attorney* ſhould call for him, alledging that ſuch Writs had been frequently granted by the Lord Chief Juſtice *Keeling*, and one of the now Juſtices of the *Kings Bench*.

His Lordſhip returned, that he did not doubt the Security they ſhould offer him, but he had never granted ſuch a Writ, and he knew not upon what Authority others had done it; and in ſhort, refuſed to grant either that, or the other Writs.

After all theſe Denials of Right, Mr. *Jenkes* reſolved to ſit ſtill, with the ſatisfaction, that his ill ſucceſs was not imputable to the Injuſtice of his Cauſe, but to the Pleaſure or Fear of thoſe that had the Power of making it otherwiſe; and with patience to expect till the Term ſhould ſet open the Priſon doors, which will not brook the denial of a *Habeas Corpus*, tho a long *Vacation* muſt.

No further Addreſs was therefore made to either of their Lordſhips, but themſelves, after they had taken the pleaſure of denying him, were pleaſed to condeſcend to Intercede for him. For, as we received by very credible information, the *Lord Chief Juſtice* went to the *Lord Chancellour*, and told him, that the Writs demanded of him were according to Law, and could not be denyed, and that he had only taken time till he had acquainted his Lordſhip with it.

The Lord *Chancellour* directed him to the Lord *Treaſurer* for further advice, who ſent him to the King. As ſoon as his Majeſty underſtood that what was demanded was the Subjects Right, he immediately commanded that the Laws ſhould have their due Courſe, which their Lordſhips had ſtop'd.

Accord-